REMARKS/ARGUMENTS

1. The Applicant has not amended any claims.

2. The Office Action of January 25, 2006 purports that the drawings submitted on July 30, 2003, the original filing date, are informal drawings. Applicant has reviewed the record and finds this statement to be erroneous. Concurrent with filing of the specification on July 30, 2003, Applicant submitted formal drawings. Applicant has received no correspondence from the office of initial patent examinations to indicate otherwise. Applicant has also scrutinized the formal drawings and finds that they comply with all drawing requirements. If there are any deficiencies in the formal drawings, Applicant solicits specific objections to the drawings that may be raised by the Examiner.

3. Claims 1 – 48 have been rejected under 35 USC 101 as being non-statutory subject matter. Applicant respectfully disagrees. Applicant agrees that a concept or idea is non-statutory. However, the claims here are drawn to a method and apparatus that is useful and creates a tangible result.

   The Office Action has introduced a suggested response for use against a method that "manipulates" a data structure. The Office Action fails to appreciate that Claims 1 – 48 provide for a method and various embodiments thereof for interacting with a primary and an adoptive file server. Surely, the Examiner will find that a file server is a useful apparatus that enables the storage and retrieval of data and that such a file server itself comprises statutory subject matter. In order to argue that the claimed method and various embodiments thereof is non-statutory subject matter, the Office Action would first need to contend that a file server is a non-statutory structure.

Following the suggested response, the Office Action maintains that Claims 1 – 48 describe a "non-patentable idea", some law of nature or an abstract manipulation of a data structure. Applicant notes that the Office Action fails to ever describe how the claimed method and various embodiments thereof should equate to any of the cases set forth either in Rubber-Tip Pencil Co. v. Howard 20 Wall. 498, 07, Gottschalk v. Benson, 175 USPQ 673, 675 (S Ct 1972), Parker v. Flook, 197 USPQ 193, 201 (S Ct 1978) or In re Warmerdam, 33 F.3d 1354, 1360, 21 USPQ2d 1754, 1759 (Fed. Cir. 1994).

The claimed method and various embodiments thereof do not comprise some abstract idea (Rubber-Tip Pencil Co. v. Howard) and do not comprise a mental process, natural phenomenon or abstract intellectual concept (Gottschalk v. Benson). The claimed method and various embodiments thereof do not relate in any manner to a data structure that is somehow created and left idle in memory as is the case in In re Warmerdam.

The fact is that the claimed method and various embodiments thereof fall within the guiles of State Street 149 F.3d at 1373-74 USPQ2d at 1601-02) and Alappat, 33 F.3d at 1544, 31 USPQ2d at 1557). The claimed method and various embodiments thereof describe a useful process for operating a primary file server in conjunction with an adoptive file server.

Considering Claim 1 where the claimed method comprises:

> receiving a file lock indicator from a primary server;
> recording the file lock indicator; and
> conveying the file lock indicator to an adoptive server when the primary server is unavailable.

The present method provides for receiving a file lock indicator from a tangible apparatus, for example a primary server. This is clearly an *input* that the present method operates upon. Based on yet another input, the unavailability of the primary server, the present method provides for a useful *output*, a previously recorded file lock that is conveyed to an adoptive server. The notion of usefulness has been equated to providing some useful and tangible result. Here, the useful and tangible result comprises conveyance of a file lock to an adoptive server. The file lock is not left idle in the memory as are the data structures of In re Warmerdam. Had this method not been followed or otherwise embodied, the adoptive server would be deprived of a file lock previously recorded after it was received from a primary server.

Since the present method contemplates generation of a *real and tangible output*, it comprises a useful machine under the State Street test. Accordingly, Applicant kindly requests that the rejection of Claims 1 – 48 under 35 USC 101 be withdrawn.

4. Claims 1 – 48 have been rejected under 35 USC 102(e) as being anticipated by Miloushev et al (US Pub. No. 2004/0133652), hereinafter Miloushev '652. In order to support a rejection under 35 USC 102(e), the reference must specifically describe the claimed subject matter.

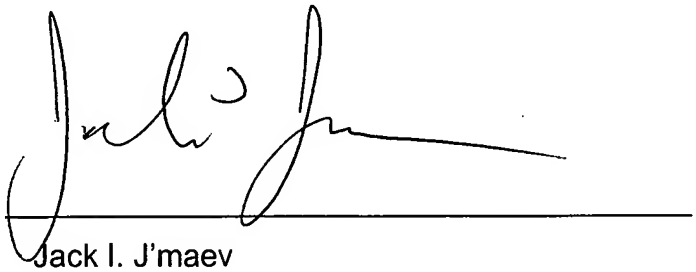
Here, the cited reference simply does not describe conveying a file lock to an adoptive server. Despite the assertions made in the Office Action, Miloushev '652 [0135] does not pertain to receiving a file lock. In fact, [0135] describes a typical server cluster and the typical services provided by such a cluster. No where is there any discussion of receiving a file lock. The Office Action further purports that [0442] describes recording a file lock and conveying it to an adoptive server. This, again, is simply not true. Paragraph [0442] describes sending an enumeration of directories to a client. There is simply

no mention of a file lock or an adoptive server. There is simply no way to even equate a server with a client, especially in the context of Miloushev '652 paragraph [0442].

Applicant finds that the only cited reference simply fails to teach any aspect of the claimed method and embodiments thereof. As such, Applicant respectfully submits that the rejection of Claims 1 – 48 under 35 USC 102(e) must be withdrawn.

5. Based on the foregoing, Applicant considers the present method and all embodiments thereof to be distinguished from the art of record. Accordingly, Applicant respectfully solicits the Examiner's withdrawal of the rejections raised in the above referenced Office Action, such that a Notice of Allowance is forwarded to Applicant, and the present application is therefore allowed to issue as a United States patent.

Respectfully Submitted,



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